

FILED

August 17 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0327

CHARLES L. CADDELL,

Plaintiff and Appellant,

v.

**HELENA ELDERHOUSING, INC., a Montana corporation and
ACCESSIBLE SPACE, INC., a Minnesota corporation,**

Defendants and Appellees.

FILED

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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

PETITION FOR A REHEARING

On Appeal from the District Court of the
First Judicial District Court of the State of Montana
in and for the County of Lewis and Clark

APPEARANCES:

CHARLES L. CADDELL
Aspen Village Unit 103
615 Janet Street
Helena, MT 59604
PRO SE PLAINTIFF AND
APPELLANT

IAN MCINTOSH
CROWLEY FLECK PLLP
45 Discovery Drive
P.O. Box 10969
Bozeman, MT 59719-0969
Phone: (406) 556-1430
ATTORNEY FOR DEFENDANTS/
APPELLEES HELENA
ELDERHOUSING, INC. and
ACCESSIBLE SPACE, INC.

Preliminary

Plaintiff-Appellant received in the Mail on Thursday August 5, 2010 this Court's Order dismissing his Appeal from Order(s) made by District Court. Plaintiff-Appellant will refer to himself from here-on as Caddell, and Defendant-Appellee Helena Elderhousing Inc. as Housing.

Caddell asks this Court to Re-Hear this matter based on Rule 20 (1) Criteria a. i, ii & iii.

FACTS BEFORE COURT

1) A District Court Order was filed on October 20, 2009 lacking any Judge signature which represented to Caddell, by copy sent, that Housing's Counsel, i.e.

"shall prepare a judgment"

Dkt #52. No "judgment" followed!

2) Seven months and twenty nine days after the Order, Housing Counsel mailed to Caddell a document, Dkt #62 showing that an Order of Dismissal-With-Prejudice existed based on no Judge signature. This document is in the Record showing that it was Filed by a Deputy Clerk of Court at 06:49 am [One hour and eleven minutes before the Clerk's Office opened at 08:00 am] on May 13, 2010. The copy of transmittal envelope is before the Court in Caddell prior Filings. showing Postmark of June 18, 2010.

3) The copy of Order, Dkt #62, while sent by Housing Counsel, was not confirmed by receipt of any copy of such Order by Clerk of Court, as was usual custom followed by Clerk of Court.

4) Six days after receipt of the Housing Counsel's representation by showing of the Dkt #62 document Caddell moved the District Court to vacate the document as a purported Order, Dkt #63.

5) Under date of June 24, 2010 representing again to Caddell that the Dkt #62 document was the document on file showing the case dismissal with prejudice was indeed the correct document *This document is not shown to have been filed prior to a June 7, 2010 unsigned Order of Jeffrey M. Sherlock showing Caddell's Motion to Vacate as denied. Dkt #64.

6) Housing's Counsel continued to represent that the Dkt #62 document was the bona fide-lawful document which made Caddell case as dismissed with prejudice. This representation was made to this Court in Housing Counsel's Motion to Dismiss Appeal by attachment of Dkt #62 under date of July 9, 2010.

FACT IN RECORD NOT PRESENTED

Caddell on request for Certified copies of District Court Orders to ascertain correctness of copy of Dkt #62 sent by Housing Counsel and that of the Dkt #64 received such copies dated 8 August 2010 as shown by such copies attached here as Exhibit C-A and C-B. Exhibit C-A shows a different Dkt #62, which while now showing a Deputy Clerk signature and a District Judge signature is not shown to have been Filed after the Dkt #62 Filing. C-A shows a Dorothy McCarter signature, with a line drawn through the name of Jeffrey M. Sherlock representing that Dorothy McCarter is District Court Judge. Such representation being that Judge McCarter was now a Judge with jurisdiction, affirmed as a fact by her signature

THIS COURT'S ORDER

This Court has found that the Dkt #62 document is a signed Order by Hon. Dorothy McCarter, making no reference to her jurisdiction, but mentioning that Caddell challenged it, leaving matter undetermined. The Court has found that Housing Counsel stated

...."Appellant has been contacted regarding this motion, but the pro se Appellant has not indicated whether he objects to this motion".....

but has determined that, Caddell did not indicate objection unequivocally to the motion.

FACT NOT PLACED IN RECORD BY APPELLEE

Housing Counsels request for a statement as to Caddell Objection. Showing again a repeat of claim that the (Exhibit B) attached to Motion to Dismiss Appeal was the bona fide valid Order of Dismissal upon which Housing would base its Motion Exhibit C-C. Exhibit C-D shows the Caddell response to the Housing Counsel's objection or not objection dated Friday July 2, 2010, received on Tuesday July 6, 2010 in mid afternoon by Caddell.

CADDALL IN THE RECORD OPPOSITION

Under date of July 15, 2010 the Caddell Opposition was before this Court.

LEGAL REASON FOR A REHEARING

The acquisition of Exhibit C-A, Certified as a document found in District Court Record, shows a fraud made on Caddell and this Court, based on undisputed false representations made to Caddell and to this Court. Housing Counsel knew that their representations that Dkt #62 was the true and only Order, was not such and that it gave no basis for any Appeal to this Court, when the representation was made and repeated, causing to make no appeal from such.

ARGUMENT

If, the District Court Record sent up to this Court contains Caddell's Exhibit C-A, then it is without argument that Housing's Counsel knowing of the existence of such Judge signed Order and that such Judge was not the presiding Judge has conducted itself in a most "to be condemned way". Concealment from Caddell of the existence of Exhibit C-A and representing that Dkt #62 was the true lawful Order, knowing this to be untrue and that no appeal could be taken on from such an Order was fraudulent Counsel conduct.

Continuing with this fraudulent representation to this Court with a representation that an Exhibit B attached [copy of Dkt #62] again compounded the fraud on Caddell....and IF..the C-A Exhibit was not before the Court in the sent up District Court Record, a fraud upon the Court.

Housing's Counsel well knew that MONTANA UNIFORM DISTRICT COURT RULES required:

Rule 11 ...Whenever a judgment * * *
signed by the presiding judge * * * it
shall be immediately delivered to the Clerk
and immediately filed in the Record of the
Court.....

which was a procedural notice requirement designed to give Public Record notice as to all bona fide Court rulings and judgments, shown to be such by a "signing", which would be one with signature. A filing by a Clerk of a document lacking required signature would be a right to notice of a true mandated copy of such a document denial. Dkt #62 shows no such a "signing, by the Presiding Judge.

This Record with Caddell's Exhibit C-A now shows two Orders, C-A and Dkt #62 which were in hands of a Deputy Clerk of Court 1 hour and 11 minutes before the Clerk's Office opened at 08:00 am on Thursday May 13, 2010. This Clerk Filed an unsigned document @ 06:49 am which she Filed as Dkt #62, but did not File, so the Docket would show it, the Exhibit C-A. It is Dkt #62 which Housing Counsel has represented is the basis from which Caddell's time of appeal within 30 days commenced.

Housing Counsel knew that appeal right had to stem from a signed order made by a Presiding Judge. The Presiding Judge also was so aware. This Court is so aware! As a matter of fact and law, Caddell could not appeal from such an Order.

The fact that a question exists as to whether or not an unsigned Order Filed with a non Presiding Judge using a Rubber Stamp constitutes a "signed dispositive" Order based on "the Rule" this Court, because it has overlooked this question ought now reconsider its Order. To allow an Order as shown by Dkt #62 to serve as a basis for appeal is to render a precedent for such procedure for all persons so postured in future.

THE LAW DEFINES ORDER & JUDGMENT

This Court has determined in its decision that an Order is a Judgment. It so concludes based on Appellate Procedural Rule 4 (1). The Rule states, as read, that (1)(a) a final judgment conclusively determines the rights * * * and settles all claims and controversy. (1)(b) says that an Order is an interlocutory judgment which does not finally decide the cause.

This District Court Record shows five District Court determinations. A Dkt #52 unsigned Order requiring a Judgment to be made and Filed. A "deeming" made without notice of the "deeming" denying a notice, so as to allow a App Rule 6 (3) b. appeal. An unfiled concealed Order. A filed simulated Order which was not followed by any Judgment. An unsigned Dkt #64 Order not followed by any Judgment.

Questions of law had they been addressed could have allowed for a different result. Caddell sees these issues:

- Issue A. Where appeal right is based on an ordered entry of judgment and such order is disobeyed has a litigant been deprived of due process right of a timely appeal by lack of a base to appeal from?
- Issue B. Where a District Court exercises a statutory right to rule by a "deeming", has a litigant been deprived of the notice needed to perfect a right of appeal from the "deeming", by concealment of the fact that a "deeming" result has taken place?
- Issue C. May the Uniform District Court Rule 11 requiring judgment's to be "signed" allow a judgment "not signed" by any Presiding Judge to be a basis for an appeal?
- Issue D. Is misrepresentation by a litigant in a proceeding, where an Order has been made signed by a non-Presiding Judge, guilty of fraudulent conduct where such litigant conceals notice of such Order and represents by use of an unsigned Order that this is the only Order the litigant has notice of, which is an Order preventing appeal a due process notice?
- Issue E. Does Montana Law allow its Judges, at any level to qualify for "signing" requirement of rulings and judgments by use of "initials"?
- Issue F. Does due process notice require a Clerk of Court in State of Montana to put a litigant on notice of "signed" Court rulings, Orders and Judgments?

These question raising the issues referred to call for this Court to look at these questions, overlooked, which would have proven decisive in the Court's decision making.

Prior to Caddell giving Notice of Appeal he had no knowledge of the existence of his Exhibit C-A presented here. On prior calls to the Clerk of the Court's Office he was advised that the only Order relating to dismissal of the case was that of Dkt #62. That it was only on request for a Certified copy of Dkt #62 that the Clerk produced Exhibit C-A. Due to the "surprise" production of a material document, Caddell requests this Court to, in event it is not in the District Court Record sent up, to now consider it as a part of such Record.

Charles L. Caddell This 17 day of August 2010
Charles L. Caddell

CERTIFICATE OF SERVICE

I personally served a true copy of my Petition for a Rehearing on ~~CERTIFICATE OF APPEAL COURT~~

IAN MCINTOSH of CROWLEY FLECK PLLP
45 Discovery Drive - P.O. Box 10969
Bozeman, Montana 59719 - 0969

by depositing the copy in the U.S. Mail System in Helena Montana,

with all required First Class Postage affixed thereon on the

17 day of August 2010.

Charles L. Caddell
Charles L. Caddell